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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,842	08/04/2003	Keith Rosiello	18405-127	5671
48329	7590	11/22/2005	EXAMINER	
FOLEY & LARDNER LLP 111 HUNTINGTON AVENUE 26TH FLOOR BOSTON, MA 02199-7610				SORKIN, DAVID L
		ART UNIT		PAPER NUMBER
		1723		

DATE MAILED: 11/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/633,842	ROSIELLO, KEITH
	<b>Examiner</b>	<b>Art Unit</b>
	David L. Sorkin	1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 14 September 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-6, 8-12 and 14-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-6,8-12 and 14-20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 14 September 2005 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                     | Paper No(s)/Mail Date. _____ .  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____ .                                  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 4-6, 8-10, 12, 14-18 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 01/30505. Regarding claims 1, 4, 5 and 9, WO ('505) discloses a flexible chamber ("bag set 20", page 3, line 25) comprising a first side (corresponding to 71, see Figs. 1, 3 and 4) and second side (the opposite end) and having an expandable wall, wherein a first end of the expandable wall is attached to a circumference of the first side of the flexible chamber and a second end of the expandable wall is attached to a circumference of the second side of the flexible chamber, wherein the expandable wall includes at least one pair of corresponding connected partitions, including first and second partitions attached to the first and second sides (see Figs. 1, 3 and 4). Regarding claims 2 and 10, an axial opening is in the first side (see Fig. 3; page 3, lines 25-26). Regarding claims 6, 8, 12 and 14, the expandable chamber has an accordion wall (see Fig. 3). Regarding claims 15 and 16, the flexible chamber is capable of being centrifuged and expressing fluid (see page 3, lines 21-26). Regarding claims 17 and 18, a plurality of flexible chambers are disclosed (See Fig. 3). Regarding claim 20, WO ('505) discloses an apparatus comprising a continuous flow centrifuge (see page 1 lines 7 and 8) and a flexible chamber ("bag set

20", page 3, line 25) comprising a first side (corresponding to 71, see Figs. 1, 3 and 4) and second side (the opposite end) and having an expandable wall, wherein a first end of the expandable wall is attached to a circumference of the first side of the flexible chamber and a second end of the expandable wall is attached to a circumference of the second side of the flexible chamber, wherein the expandable wall includes at least one pair of corresponding connected partitions, including first and second partitions attached to the first and second sides (see Figs. 1, 3 and 4).

3. Claims 1-6, 8-12 and 14-20 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 02/28451. WO ('451) discloses a continuous flow centrifuge (see page 2, lines 5-6) including a plurality of flexible chambers (pluralities of 10 and/or 50 and sets thereof), each first and second sides with axial openings at both sides and an expandable wall (see page 6 line 2 to page 7 line 8), wherein a first and of the expandable wall is attached to a circumference of the first side of the flexible chamber and a second end of the expandable wall is attached to a circumference of the second side of the flexible chamber, wherein the expandable wall includes at least one pair of corresponding connected partitions, including first and second partitions attached to the first and second sides (see Figs 3 and 7).

4. Claims 1-6, 8-12 and 14-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Hasselquist (US 2,686,006). Hasselquist ('006) discloses an apparatus comprising a flexible chamber comprising a first side (24) having a an axial opening (22) and a second side (26) having an axial opening (27) and having an expandable wall (10), wherein a first end of the expandable wall is attached to a circumference of the

first side of the flexible chamber and a second end of the expandable wall is attached to a circumference of the second side of the chamber, wherein the expandable wall includes at least one pair of corresponding connected partitions (11 and/or 15), including first and second partitions attached to the first and second sides (see Fig. 2).

***Response to Arguments***

5. Applicant does not contest that WO 02/28451 discloses the claimed invention(s). Instead, applicant falsely states that "The instant application claims priority to U.S.S.N. 09/970,547". To the contrary, the instant application does not claim priority to any application. Applicant also falsely states that "Application 09/970,547 is the U.S. national phase application of the '451 application". However, 09/970,547 was not filed under section 371 and is not the national stage of any international application.
6. Applicant fails to point out any structural difference between the invention(s) of claims 1-6, 8-12 and 14-18 and the structure of Hasselquist (US 2,686,006). While applicant discusses an intended use of the apparatus invention, "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987). Also, "the manner or method in which such machine is to be utilized is not germane to the issue of patentability of the machine itself" *In re Casey*, 152 USPQ 235 (CCPA 1967).
7. Figs. 1, 3 and 4 of WO 01/30505 clearly show partitions in accordance with claims 1, 2, 4-6, 8-10, 12, 14-18 and 20.

***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 571-272-1148. The examiner can normally be reached on 9:00 -5:30 Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David L. Sorkin  
Primary Examiner  
Art Unit 1723

DLS